



**Kalume v Samue (Enviromental and Land Originating Summons
E026 of 2025) [2026] KEELC 469 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 469 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E026 OF 2025**

EK MAKORI, J

JANUARY 28, 2026

**IN THE MATTER OF: SECTIONS 17, 37, AND 38 OF THE
LIMITATION OF ACTIONS ACT, CAP 22, LAWS OF KENYA**

-AND-

**IN THE MATTER OF: KILIFI/MAVUENI ‘B’ S. SCHEME/1521 MEASURING
APPROXIMATELY 3.4 HECTARES SITUATE IN KILIFI COUNTY**

-AND-

IN THE MATTER OF: THE LAND ACT, 2012

-AND-

**IN THE MATTER OF: AN APPLICATION FOR DECLARATION THAT THE PLAINTIFF
HAS OBTAINED OWNERSHIP OF 3.4 HECTARES OF KILIFI/MAVUENI ‘B’ S.
SCHEME/1521 SITUATE IN KILIFI COUNTY NORTH BY WAY OF ADVERSE POSSESSION**

BETWEEN

JACOB KAHINDI KALUME PLAINTIFF

AND

JACINTA MWELI SAMUE DEFENDANT

JUDGMENT

1. The Plaintiff sought the following reliefs vide his Originating Summons (OS) dated 23rd May 2025:
 - a. A declaration that the Defendant’s title to Kilifi/Mavueni ‘B’ S. Scheme/1521 - 3.4 Hectares, situate in Kilifi County, has been extinguished in favor of the Plaintiff by adverse possession pursuant to Sections 17, 37, and 38 of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, having occupied the said plot for more than 12 years preceding the filing of this suit.



- b. The Plaintiff is entitled to be registered forthwith as the owner of all that piece of land known as Kilifi/Mavueni ‘B’ S. Scheme/1521 - 3.4 Hectares, situate in Kilifi County, which the Plaintiff has held in adverse possession since the year 2012 to date, for a period of more than 12 years immediately preceding the filing of this suit. The same is land which the Plaintiff has occupied openly, exclusively, notoriously, and continuously as of right and without any interruption from the Defendant or its predecessor in title.
 - c. The Land Registrar at the Kilifi Land Office to delete the name of Jacinta Mweli Samuel, the Defendant herein, and to register the name of Jacob Kahindi Kalume, the Plaintiff herein, in place thereof, absolutely.
 - d. The costs of this Application should be provided.
2. The whereabouts of the Defendant remain unknown, and service was properly effected through a widely circulated newspaper.
 3. The Defendant therefore did not submit a response. Because the Plaintiff’s affidavit was uncontested, the court directed the OS to proceed on the affidavit evidence.
 4. Evidence was presented that the Defendant is the registered owner of the suit property herein, being Kilifi/Mavueni ‘B’ S. Scheme/1521 - 3.4 Hectares. The Plaintiff attached a certified copy of the Certificate of Title. The Plaintiff contends that he has continuously utilized the suit property since 2012, openly, peacefully, and without interruption, for a period of over 12 years preceding the issuance of this summons. Since the Plaintiff has had adverse possession of the said property for a period in excess of 12 years preceding the taking out of this summons, he asserts that he has therefore acquired prescriptive rights over the property through adverse possession.
 5. I received submissions from learned counsel for the Plaintiff, Mr. Mwangunya, with thanks, since the same went a long way to assist the court in reaching its verdict.
 6. The issues that fall for the determination of this court, arising from the submissions and materials presented before me, are whether the Plaintiff has proved the claim as presented in the OS, and who should bear the cost of the proceedings.
 7. Order 37 Rule 7 of the *Civil Procedure Act* provides that:
 - (1) An application under section 38 of the *Limitation of Actions Act* (Cap. 22) shall be made by originating summons.
 - (2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.
 - (3) The court shall direct on whom and in what manner the summons shall be served.
 8. After no appearance was made by the Defendant herein, the Plaintiff asserts that he has continuously used the suit property openly, peacefully, and without interruption since the year 2012, a period of over 12 years. As of the date of this judgment, the period is over 13 years.
 9. Section 7 of the *Limitation of Actions Act* provides that an action to recover land may not be brought after the end of twelve years from the date the right of action accrued.
 10. Significantly, Section 17 of the *Limitation of Actions Act* provides the extinguishing effect:
 - “ 17. Title extinguished at end of limitation period Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an



action to recover land (including a redemption action), the title of that person to the land is extinguished.”

11. Section 38(1) of the *Limitation of Actions Act* allows a person in whose favor the period of limitation can run to apply to the Environment and Land Court for an order that he be registered as the proprietor of the land in place of the person then registered.
12. In *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] KECA 532 (KLR), the court held that:

“The main justification for the law of adverse possession has variously been given as the need to discourage land owners against, as it were, sitting or sleeping on their land-related rights hence the maxim “vigilantibus non dormientibus, jura subveniunt”, an equivalent to the maxim that equity aids the vigilant. Paper owners of land are encouraged to utilize their land or else a squatter would be prepared to make use of it, invoke the equitable defence of laches and the law will protect him. “
13. For an adverse possession claim to succeed, the possession must be: nec vi (without force); nec clam (not secret); nec precario (without permission).
14. The Plaintiff, through his affidavit, has proven that his possession meets all necessary criteria: it is actual, continuous, and uninterrupted for more than 12 years. He states that he began using the land in 2012, exceeding the legal 12-year requirement. His affidavit provides a clear, consistent timeline. The possession is open and notorious, meaning his activities are visible and that the Defendant was aware of, or should have been aware of, his occupancy. Furthermore, the possession is hostile and unauthorized.
15. The Plaintiff has stated under oath that his possession was without the Defendant’s consent. He entered and remained on the land as if he were the true owner. The Defendant’s failure to take any steps to evict him is indicative of the hostile nature of his possession.
16. The Defendant’s failure to enter an appearance or file a defense is a significant factor. It means the Plaintiff’s factual assertions are uncontested. By her inaction, the Defendant has effectively admitted the Plaintiff’s claim. Her title was extinguished by operation of law 12 years after the Plaintiff’s possession began, and she has no legal or equitable basis to oppose this OS.
17. Based on the foregoing, the Plaintiff is entitled to the prayers sought in the OS, as set out hereunder:
 - a. A declaration that the Defendant’s title to Kilifi/Mavueni ‘B’ S. Scheme/1521 - 3.4 Hectares, situate in Kilifi County, has been extinguished in favor of the Plaintiff by adverse possession pursuant to Sections 17, 37, and 38 of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, having occupied the said plot for more than 12 years preceding the filing of this suit.
 - b. The Plaintiff is entitled to be registered forthwith as the owner of all that piece of land known as Kilifi/Mavueni ‘B’ S. Scheme/1521 - 3.4 Hectares, situate in Kilifi County, which the Plaintiff has held in adverse possession since the year 2012 to date, for a period of more than 12 years immediately preceding the filing of this suit. The Plaintiff has openly, exclusively, notoriously, and continuously occupied the land as of right, without interruption by the Defendant or its predecessor in title.
 - c. The Land Registrar at the Kilifi Land Office to delete the name of Jacinta Mweli Samuel, the Defendant herein, and to register the name of Jacob Kahindi Kalume, the Plaintiff herein, in place thereof absolutely.
 - d. With the costs of this OS to the Plaintiff.



DATED, SIGNED, AND DELIVERED VIRTUALLY AT NYERI ON THIS 28TH DAY OF JANUARY 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Mr.Mwangunya for the Plaintiff

Kendi: Court Assistant

